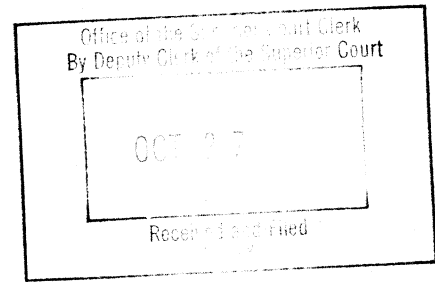


PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
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Newark, New Jersey 07101
Attorney for Plaintiffs



By: Gina M. Betts
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(973) 877-1280

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, ESSEX COUNTY
DOCKET NO. ESX-C 345-05

PETER C. HARVEY, Attorney General of the
State of New Jersey, and KIMBERLY S.
RICKETTS, Director of the New Jersey
Division of Consumer Affairs,

Plaintiffs,

v.

GARDEN STATE GUTTER CLEANING,
LLC., MICHAEL PITTARO, individually and as
owner, officer, director, shareholder, founder,
manager, agent, servant, employee and/or
representative of GARDEN STATE GUTTER
CLEANING, LLC, JOHN and JANE DOES 1-10,
individually and as owners, officers, directors,
shareholders, founders, managers, agents, servants,
employees and/or representatives of GARDEN
STATE GUTTER CLEANING, LLC. and XYZ
CORPORATIONS, 1-10,

Defendants,

Civil Action

COMPLAINT

Plaintiffs Peter C. Harvey, Attorney General of the State of New Jersey, with offices located
at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Kimberly S. Ricketts, Director of the

New Jersey Division of Consumer Affairs, with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

PARTIES AND JURISDICTION

1. The Attorney General of the State of New Jersey (“Attorney General”) is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act (“CFA”) N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. The Director of the New Jersey Division of Consumer Affairs (“Director”) is charged with the responsibility of administering on behalf of the Attorney General the CFA and the regulations promulgated thereunder.

2. By this action, the Attorney General and the Director (collectively referred to as “Plaintiffs”) seek injunctive relief and other relief for violations of the CFA and the regulations promulgated thereunder. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19. Venue is proper in Essex County, pursuant to R. 4:3-2, because it is the county in which defendants have advertised and or/conducted business and in which they maintain an office to conduct business.

3. Defendant Garden State Gutter Cleaning, LLC. (“Garden State Gutter Cleaning”) is a limited liability corporation established in the State of New Jersey (the “State”) on May 8, 2001. Upon information and belief, at all relevant times, Garden State Gutter Cleaning maintained a principal place of business at 385 Broad Street, Bloomfield, New Jersey 07003. The registered agent for Garden State Gutter Cleaning is Michael Pittaro (“Pittaro”).

4. Upon information and belief, at all relevant times, defendant Pittaro was the owner, officer, director, shareholder, founder, manager, agent, servant, employee and/or representative of

Garden State Gutter Cleaning. Upon information and belief, at all relevant times, Pittaro has maintained a mailing address of 74 Elston Street, Bloomfield, New Jersey 07003.

5. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, and/or representatives of Garden State Gutter Cleaning who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

6. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

7. Defendants Garden State Gutter Cleaning and Pittaro are collectively referred to as "Defendants."

GENERAL ALLEGATIONS

8. Upon information and belief, since at least May 8, 2001, Defendants have been engaged in the business of performing home improvements in the State and elsewhere including, but not limited to, installation of gutters as well as gutter repair and cleaning.

9. Upon information and belief, Defendants have entered into home improvement contracts with consumers in this State and elsewhere to perform home improvement services including, but not limited to, installation of gutters as well as gutter repair and cleaning.

COUNT I

VIOLATION OF THE CFA BY DEFENDANTS **(UNCONSCIONABLE COMMERCIAL PRACTICES)**

10. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 9 above as if more fully set forth herein.

11. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing [] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

12. In the operation of their home improvement business, Defendants have engaged in the use of unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

13. Defendants have engaged in unconscionable commercial practices including, but not limited to, the following:

- a. Providing gutter cleaning services that were never authorized by consumers;
- b. Charging consumers for unauthorized gutter cleaning services;
- c. Providing gutter repair services that were not authorized by consumers;
- d. Charging consumers for unauthorized gutter repair services;
- e. Charging consumers for services that Defendants never provided;
- f. Advising consumers that their gutters had been cleaned when they had not;
- g. Scheduling appointments for free estimates, failing to appear on the appointed date, and then performing and charging consumers for unauthorized services;

- h. Threatening to send to collection agencies invoices for services never authorized by consumers;
- i. Threatening to send to collection agencies invoices for services never provided;
- j. Sending to collection agencies invoices for services never authorized by consumers;
- k. Sending to collection agencies invoices for services never provided;
- l. Making harassing and threatening telephone calls to senior citizens pertaining to unpaid gutter cleaning invoices;
- m. Threatening to place a lien on the home of a senior citizen who refused to pay an invoice for services that were neither requested nor performed;
- n. Failing to commence home improvement work by the date or within the time period represented to the consumer;
- o. Failing to provide consumers with timely written notice of a delay in the commencement or completion of the home improvement work;
- p. Failing to obtain consumers' consent, written or otherwise, to any changes in the commencement and/or completion dates specified in the home improvement contract;
- q. Failing to include in home improvement contracts the signature of all parties;
- r. Damaging a consumer's home and/or personal belongings while performing home improvement work;
- s. Failing to return to consumers' homes to complete home improvement work;
- t. Accepting payment for home improvement work that Defendants never commenced;
- u. Failing to provide consumers with refunds for home improvement work that Defendants never commenced; and
- v. Failing to respond to consumers' telephone calls and/or written correspondence in a timely manner or at all.

14. Each unconscionable commercial practice by Defendants constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATION OF THE CFA BY DEFENDANTS (FALSE PROMISES, MISREPRESENTATIONS AND KNOWING OMISSIONS OF MATERIAL FACT)

15. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 14 above as if more fully set forth herein.

16. In the operation of their home improvement business, Defendants have engaged in knowing omissions of material fact including, but not limited to, the following:

- a. Failing to include in home improvement contracts the date or time period within which work is to commence;
- b. Failing to include in home improvement contracts the date or time period within which work will be completed;
- c. Failing to include in home improvement contracts the legal name of the sales representative or agent who negotiated the contract;
- d. Failing to include in home improvement contracts a clear, accurate and legible statement of all terms and conditions;
- e. Failing to advise consumers that they would be charged for unauthorized services; and
- f. Failing to advise consumers that they would be charged for services that were never performed.

17. In the operation of their home improvement business, Defendants have made false promises and/or misrepresentations including, but not limited to, advertising that Defendants provide free estimates, and then failing to provide an estimate upon consumer request.

18. Each false promise, misrepresentation and/or knowing omission of material fact by Defendants constitutes a separate violation under CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATION OF THE HOME IMPROVEMENT PRACTICES REGULATIONS BY DEFENDANTS

19. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 18 above as if more fully set forth herein.

20. The Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. (“Home Improvement Regulations”), promulgated pursuant to the CFA, among other things, prohibit certain acts and practices of a seller in connection with the sale, advertisement or performance of home improvement contracts.

21. Defendants are “seller[s]” within the definition of N.J.A.C. 13:45A-16.1.

22. At all relevant times, Defendants entered into “home improvement contract[s]” within the definition of N.J.A.C. 13:45A-16.1.

23. The Home Improvement Regulations prohibit certain practices with regard to the performance of home improvement contracts, as follows:

- a. Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization of a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder:

.....

7. Performance:

- i. Deliver materials, begin work, or use any similar tactic to unduly pressure the buyer into a home improvement contract, or make any claim or assertion that a binding

contract has been agreed upon where no final agreement or understanding exists;

- ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or
- iii. Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

[N.J.A.C. 13:45A-16.2(a)(7).]

24. In addition, the Home Improvement Regulations deem it an unlawful practice for the seller to:

Request the buyer to sign a certificate of completion, or make final payment on the contract before the home improvement is completed in accordance with the terms of the contract. . . .

[N.J.A.C. 13:45a-16.2(a)(6)(v).]

25. Moreover, the Home Improvement Regulations include a writing requirement for contracts priced in excess of \$200.00 and provide, in pertinent part:

- 12. Home improvement contract requirements - writing requirement: All home improvement contracts for a purchase price in excess of \$200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

. . . .

- ii. A description of the work to be done and the principal products and materials to be used or installed in performance

of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction material to be used.

....

- iv. The dates or time period on or within which the work is to begin and be completed by the seller;

....

- vi. A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller.

[N.J.A.C. 13:45A-16.2(a)(12)(ii), (iv), (vi).]

26. Defendants violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to:

- a. Delivering materials and performing gutter cleaning and/or other services when the consumer had not contracted for such home improvement work to be performed;
- b. Seeking payment for gutter cleaning and/or other services when consumers had not contracted for such home improvement work to be performed;
- c. Failing to commence the home improvement work by the date or within the time period represented to consumers;
- d. Failing to provide consumers with timely notice of a delay in the commencement or completion of home improvement work as well as when the work will commence or be completed;
- e. Failing to include all changes in the terms and conditions of the home improvement contract in writing;
- f. Requiring consumers to make final payment on the home improvement contract before the work was completed in accordance with the terms of the contract;
- g. Failing to include in home improvement contracts the dates or time periods or on within which the work is to commence;

- h. Failing to include in home improvement contracts the dates or time periods on or within which work is to be completed;
- i. Failing to include in home improvement contracts a clear, accurate and legible statement of all terms and conditions; and
- j. Failing to include in home improvement contracts a statement of any guarantee or warranty concerning any products, materials, labor and/or services to be provided thereunder.

27. Defendants' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

COUNT IV

VIOLATIONS OF THE CFA AND/OR THE HOME IMPROVEMENT REGULATIONS BY DEFENDANT PITTARO

28. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 27 above as if more fully set forth at length herein.

29. At all relevant times, Pittaro was owner, officer, director, shareholder, founder, manager, agent, servant, employee and/or representative of Garden State Gutter Cleaning and controlled and directed the activities of that entity.

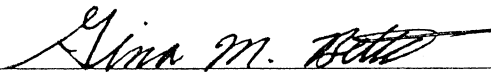
30. Pittaro is personally liable for the violations of the CFA and/or the Home Improvement Regulations committed by Garden State Gutter Cleaning.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) Finding that the acts and omissions of Defendants constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A., 56:8-1 et seq., and the Regulations promulgated thereunder, specifically the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;
- (b) Permanently enjoining Defendants and their owners, agents, employees and representatives and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorney's fees, against Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56: 8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

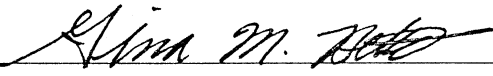
By: 
Gina M. Betts
Deputy Attorney General

Dated: October 27, 2005
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendants, but have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

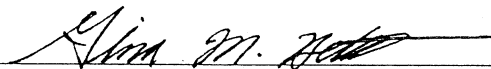
By 
Gina M. Betts
Deputy Attorney General

Dated: October 27, 2005
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Gina M. Betts is hereby designated as trial counsel for this matter.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Gina M. Betts
Deputy Attorney General

Dated: October 27, 2005
Newark, New Jersey